VIRGINIA LAW REGISTER

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As a Layman Sees a Lawyer.

We publish as our leading article this month, with the permission of the author and the publisher, the chapter entitled "Advocacy" from Mr. Albert S.. Osborne's excellent book called "The Problem of Proof." We do this because we think it well sometimes that the profession should see itself viewed by a fair-minded layman of wide acquaintance with the courts. We must confess that much said in this chapter is absolutely true and it is a most humiliating fact that the lawyer of today does not occupy the position which he occupied fifty years ago and which he should ever occupy. President Wilson in 1910, made an excellent address before the American Bar Association, entitled "The Lawyer and the Community." We think it is a great pity that all lawyers should not read this address, especially the younger members of the bar. Ex-President Wilson said:

> "Meanwhile, look what legal questions are to be settled, how stupendous they are, how far-reaching, and how impossible it will be to settle them without the advice of learned and experienced lawyers! The country must find lawyers of the right sort and of the old spirit to advise it, or it must stumble through a very chaos of blind experiment. It never needed lawyers who are also statesmen more than it needs them now—needs them in its courts, in its legislatures, in its seats of executive authority—lawyers who can think in the terms of society itself, mediate between interests, accommodate right to right, establish equity, and bring the peace that will come with genuine and hearty co-operation, and will come in no other way. * * *
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> * * * Has not the lawyer allowed himself to become

> part of the industrial development, has he not been sucked into the channels of business, has he not changed his connections and become part of the mercantile structure rather than part of the general social structure of our commonwealths as he used to be? Has he not turned away from his former interests and duties and become narrowed to a technical function?"

And in connection with this quotation one may well quote Ex-President Taft in his book "Ethics in Service:"

> "It is not too much to say that the profession of the law is more or less on trial."

Fifty years ago the lawyer was the leading man in his community. He stood for high things and above all he stood for the highest system of ethics in the profession of the law. The lawyer who solicited business, the lawyer who took short cuts, the lawyer who did not practice law on the highest plane did not occupy an enviable position with the other members of the fraternity. How is it now? The ambulance chaser—whose activities, thank heaven, are now somewhat curtailed, owing to the Workmen's Compensation Law—had grown to be a common thing, and young lawyers did not—and we are afraid do not—seem to think it derogatory to the profession to solicit business. It is a common thing now for the younger members of the profession in a city to go around to merchants and solicit their collecting business. It is a common thing for them to offer their services where they know litigation is about to be commenced and this seems to be thought perfectly proper and right. Then there is growing up in the profession the idea that they must win cases; that they must feel themselves, so to speak, as part and parcel of their client's case, and not as the advocate of right and justice trying to make both the court and jury recognize the justice of their case by the righteousness that is in it, but by any means through which they may obtain a verdict. We suppose the mad scramble for practice, the crowding of the bar with men depending upon practice for a living, the ambition of the younger men, may have something to do with this, but it is a pity that their ambition and activity should not select a different channel and the high nature of the legal profession be maintained. We believe nearly all of the law

schools now teach the ethics of the law as a part of the curriculum but does the teaching amount to anything? The only solution, it seems to us, is for each member of the profession to recognize the fact that his profession is a high one, that it is not a trade, and that he should frown down upon all efforts of either younger or older men to degrade the profession in any way. We consider Mr. Osborne's book, as we have heretofore said, as one not only of great interest but of great value, and we are glad to give the profession the benefit of this chapter and to say that they will find it only one of many interesting ones.

Our Lunacy Laws.

Probably the case of Mr. John Armstrong Chaloner has brought before the public our lunacy law in a way it would not have been brought except for the proceedings taken by him and the book written by him. We suppose very few people in Virginia have thought about the nature of our laws upon this subject. They have worked very well, it seems to us, and we are not personally aware of any person who has been injured in liberty or property by any proceeding taken under our laws. We think this a high tribute to our Virginia people, but the article by Mr. Charles E. Kemper in this number of the REGISTER has caused us to think somewhat of the dangers that may lurk in our present lunacy laws. Mr. Kemper is mistaken in supposing that a person charged with lunacy has no chance for a jury trial. He undoubtedly has such a chance, but he can only reach a jury trial by the tedious process of a habeas corpus and very few people brought before a commission know anything about this and are seldom represented by counsel. Ought we not to have some way by which when a person is charged with lunacy a guardian *ad litem* could be appointed who would be a skilled lawyer, who should be present at the trial and be enabled to take an appeal to the circuit or corporation court and demand a jury trial? In the mean time, of course, the lunatic, if the commission deemed it wise, might be placed in the custody of friends or committed to the hospital in accordance with the present law. We think the matter is well worth the consideration of our law makers.

The papers both legal and otherwise, have been discussing at

The Public Defender.

some length during the past few months the question of a Public Defender. The more one thinks of it the more necessary to the proper administration of justice we believe such an officer to be. It is true that no man is tried in our courts who is not able to employ counsel, that counsel is not assigned to him by the court; but too often the counsel thus assigned are the youngest members at the bar, the court thus giving an opportunity to our young knights to flash their maiden swords. We think it proper to say that in nearly all instances these young lawyers do their duty fully and with even more zeal and success than the older and well paid attorneys, but at the same time an experience of some years has convinced us that a Public Defender would expedite justice and the business of the courts with more zeal and celerity than at present. Whilst it is true that the Attorney for the Commonwealth ought to a certain extent to consider himself as representing the prisoner, too often in the zeal of combat even the best Attorney for the Commonwealth will forget this duty and urge a conviction with a greal deal of force when probably had he looked at it impartially he would have advised the jury of the exact nature of the case. The difficulty with most Attorneys for the Commonwealth is that they do not even hear the evidence for the Commonwealth in full until the trial. With that strange distrust of its public officers which we think is one of the peculiar characteristics of the State of Virginia, the Commonwealth's Attorney is not allowed to appear before the grand jury unless summoned as a witness. We have seen it gravely stated that the reason for this is that the Attorney for the Commonwealth would try to get as many indictments found by the grand jury as possible, whereas we believe that the conscientious Attorney for the Commonwealth wants to have as few indictments found as possible, and if he were in the jury room to aid and counsel the grand jury and advise them as to the nature of evidence and get a full view of the case, a great many indictments which are now found and often have to be "nolle prossed" would not be found. In the United States courts the district attorney, or one of his assistants, always appears in the grand jury room. He cross-questions the witnesses, hears the whole case and is therefore in a much better position to say whether an indictment

ought to be found. A similar rule prevails in most of the States of the Union and has been found to work admirably, but this not being the case in Virginia the position of the Public Defender becomes one of great importance. Occupying a position somewhat similar to the Attorney for the Commonwealth, the Public Defender would be able to give ample time to the case and in many instances to advise his client to plead guilty, and when he did defend him would defend him with the highest motives to do justice and not merely to gain a victory. This view may seem to be a little optimistic but we believe that if the right sort of man were selected for the place it would not be at all so. Of course it is possible that the Commonwealth might be imposed upon, but this could be easily remedied by the judge making a strict inquiry into the ability of the accused to pay counsel, and only when it was found that the accused was absolutely unable to pay counsel would the case be assigned to the Public Defender and time given him to examine thoroughly into it. Space will not permit us to work out the scheme that a committee of the Legislature might perfect but we refer a discussion of this question to our Bar associations and to our lawmakers, believing that if thoroughly studied and worked out a plan might be adopted to make the appointment of such an officer not only feasible but to the great benefit of the Commonwealth.

Violation of City Ordinance and Failure to Plead or Prove the Ordinance.

In the case of *Collins* v. *City of Radford,* decided by our Supreme Court of Appeals on September 21st, 1922, the Court decides a very important question, and whilst not strictly involved in the case, because counsel in no way relied upon or referred to the point, the court very wisely says it thought it well to express its views upon the question, because the question was quite likely to arise at any time in the multitude of similar prosecutions (i. e., violation of the Prohibition Law) which are now of almost daily occurrence and not so far as the court then knew settled already in other Virginia decisions. This was a case in which one Albert L. Collins was arrested for unlawfully transporting ardent spirits in the City of Radford, and the warrant alleged that the said

Collins had been previously convicted of storing and keeping for sale ardent spirits, in the civil and police justice's court. The instant case was tried by the civil and police justice of the city of Radford for a violation of the city ordinance. He appealed and was tried by a jury in the corporation court of said city, found guilty and sentenced to pay a fine and to be imprisoned. The warrant did not specifically charge a violation of a city ordinance and concluded in the name of the Commonwealth and not in the name of the city, but the court held that the warrant showed that it emanated from the city of Radford, for an offense committed against the prohibition law within the city limits and was to be tried by the police justice of that city, whose jurisdiction as to such offenses was expressly confined by law to infractions of city ordinances. The court held that it was a matter of indifference as to how the warrant concluded, because even if irregular it was neither misleading nor inconsistent, as a municipality is after all but a mere arm or agency of the State. The court further held that the case having originated in a municipal court of exclusive original jurisdiction it was not necessary in that court to plead or prove the ordinance, and that whilst there was a diversity of judicial decisions on the question as to whether the same rule applied on appeals from municipal courts to state courts where the trial is to be had *de novo,* as we say, that in such cases in this State the state courts hold the same relationship to the ordinance as municipal courts and that both the police justice and the corporation court of the city of Radford were bound in this case to take judicial notice of the existence and effect of the ordinance, and therefore there was no defect in the warrant by reason of its failure to allege the same. The court also holds that the failure to allege that the accused attempted to "unlawfully" transport ardent spirits could not avail the accused because the act which the accused was charged with having attempted was clearly unlawful, and if he was guilty as charged he was certainly in no way prejudiced by the omission of that word from the warrant.

We quote with the greatest pleasure the following statement of the court:

> "In *Jones* v. *Commonwealth,* 100 Va. 842, 853, it was announced as the settled practice of this court to give the accused in a criminal prosecution the benefit of his demurrer

to the indictment, or his motion to quash the writ of *venire facias* for error apparent on its face, although the special grounds of demurrer or the motion to quash were not pointed out. Whether, under our present statutory provisions regulating procedure in felony cases or under formal indictments, we would follow that rule is a question which we need not now decide, because it is certain that a different rule prevails in misdemeanor cases originating before a justice of the peace. *Harding's case, Flint's case, Robinson's case* and *Harley's case, supra.* A general motion to quash a warrant on appeal, which points out no specific objections, cannot, under the terms of our statute as interpreted and applied in the decisions above cited, avail after verdict as against any defect in form unless it appears from the record of the trial that the accused was or could have been prejudiced thereby. The dockets of the trial courts, as is only too well known, are crowded with criminal cases, many of them appeals from sentences imposed by magistrates and police justices. The statutes to which we have referred were intended to facilitate the prompt trial of cases—an end promotive of real justice to all parties, as far as possible, with due regard for substantial rights, that increasingly important policy. No backward step in this respect is to be considered."

We have always believed that the legislature ought to so amend the law as to provide that no demurrer to an indictment and no motion to quash a writ of venire facias for error on its face should be considered unless the grounds thereof were in writing. The prisoner is amply protected, more than amply protected in the courts of this Commonwealth against errors which seriously affect his life or liberty. Should technicalities of such a trifling nature as not to be apparent upon the face of a paper be allowed to set aside a verdict and put the state to costs and the felon to the likelihood of acquittal on account of the lapse of time, for errors which after all amount to mere technicalities and which in no way affect the prisoner's rights?

The Evils of the Present Methods of the Public Press in Regard to Crimes.

That the newspaper is a great power for good in a community there can be no question, and that in a great many instances it has assisted in the detection of crime and the conviction of the criminal there also can be little doubt; but there is a very serious question as to whether the pub-

lication again and again of crimes and the pointing out of the accused and the detailing of suspicions and partial evidence does not do more harm than good. In other words, can any person get a fair trial in any community in which a newspaper has been for weeks publishing every petty detail, every suspicion, long conversations with witnesses, prosecuting attorneys, the accused and others too numerous to mention? Does not the public mind get so saturated with the case that it is well nigh impossible to get an unprejudiced and intelligent jury? No worse violation of what it seems to us is the ethics of newspaper writing can be found than in the Hall case, where Rector Hall and his supposed mistress were killed. Column after column has been filled *ad nauseam* with the details of this crime, and how any fair-minded jury with ordinary intelligence can be found to try this case within the limit of one hundred miles of New Brunswick, New Jersey, it is impossible to imagine. Although a great many of our readers have seen it, we publish herewith a letter from the Bishop of New Jersey, which we think ought to be read by every member of the legal profession, and of whose clear and excellent statement every newspaper in the United States ought to take notice. It appeared in that paper which has always carried at its head "All the news that's fit to print," which in our humble judgment ought now to be changed to "All the news that's fit to print and a great deal more besides."

BISHOP MATTHEWS PROTESTS AGAINST THE CRUELTY OF INSINUATIONS.

To the Editor of The New York Times:

Will you permit me to enter a protest against the irresponsible statements and cruelly unjust insinuations against Mrs. E. W. Hall which are being published broadcast and which the reading public very likely takes for truth?

In today's issue of your paper reference is made to an article soon to appear in The Medical Review of Reviews, in which the writer professes to be astonished at Mrs. Hall's "stoicism." Of course anything Mrs. Hall might say or do would be construed by such a writer unfavorably. If she were hysterical and unnerved, that, I presume, would be regarded as a damning evidence of guilt. To us who know her well her fortitude and courage are simply the signs of her faith and character. Others of like faith and character would exhibit a like fortitude and courage. To those of us who

know her the horrid insinuations constantly appearing in the public press are inexpressibly shocking. That the public is so ready to believe the worst is a revelation of evil-mindedness on the part of the public, and that the newspapers are so ready to print anything of such a character manifests such a lowering of morale on the part of the newspapers as to cause very grave concern.

Cases should not be "tried in the newspaper," in my opinion, and I wish our courts of justice could or would prohibit it. Thousands upon thousands read the papers and are influenced by them. The press should have a high sense of responsibility, which seems conspicuously lacking, at any rate in the news columns. I should think that the editor of a great newspaper would hesitate to let his readers be guided by the comments of employees whose "nose for news" seems to be like that of a bird of prey.

The article your paper quotes seems a curious one to be published in a scientific paper. Cornelia is referred to as giving her two boys as sacrificial offerings for the good of the State. Isn't there some confusion here between Curtius and the "Mother of the Gracchi"? I think that persecuted and wronged Boadicea is a better prototype of this case than even the author knows, but it surely is strange to liken her "to one of those queens to whom murder was a rung to absolution." What does the man mean?

I feel that the newspapers are quite right in publishing facts, but they ought to know their facts; and in this case, perhaps more widely published than any case in recent years, I feel that time and again a cruel and bitter wrong has been committed against a high-minded Christian woman and one altogether innocent. I wish to enter an indignant protest against it.

PAUL MATTHEWS,
Bishop of New Jersey.

Princeton, N. J., Nov. 6, 1922.

Bishop Matthews is absolutely correct in his feeling that newspapers are quite right in publishing facts, but after publishing facts should they give columns and columns to that which can only excite the most prurient curiosity and which tends to debase public sentiment and obstruct the wheels of justice?